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THE UNITED STATES DEPARTMENT OF STATE

IN the conduct of foreign relations, the President, though ultimately responsible to the people for the general success or failure of such conduct, is unable, of course, to give his personal attention to any except what he deems to be the most important and momentous questions of policy. For handling the great mass of routine matters and even for the determination of many questions of policy which are of considerable importance, he is dependent upon the assistance of the agencies supplied for that purpose. These agencies are, principally, the department of state, the diplomatic service, and the consular service. These three agencies are, in reality, parts of one whole, which has its head office in Washington and its agents in every part of the world. For purposes of convenience, however, they may be separately considered.

Although the Constitution of the United States definitely provides for the appointment by the President of diplomatic and consular agents, no specific provision is made in that instrument for the creation of an executive department of the government to handle foreign affairs. That various executive departments would be created, however, was implied in the provisions that the President "may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices" and that Congress might vest the appointment of inferior officers in the President alone or in the heads of the departments. Over the creation of such departments, the President has no legal control, except negatively through his veto power, since they can be established only by Congressional statute. Congress proceeded to the exercise of this power very shortly after the government went into operation under the present constitution. By an act of July 27, 1789, a department of foreign affairs was created at the head of which was placed a secretary of foreign affairs. This officer was, of course, to be appointed by the President with the advice and consent of the senate, but considerable debate arose in Congress as to whether the President should also have the power of removing him from office. Upon this point the Constitution was silent. Some members of Congress were of the opinion that, on the analogy of the method of appointment, the President should have the power of removal but only with the consent of the senate. James Madison strongly opposed this view on the ground that it might have the effect of making an administrative officer who was supposed to be

subordinate to the President in reality independent of him. Since upon the President rested the responsibility for the conduct of foreign relations, he should also have power over the head of the department of foreign affairs, without interference, other than by way of advice, from the senate. This view finally prevailed, but it was considered improper expressly to confer upon the President in the act the power of removal, since this might be construed to imply that he had no such authority under his general executive power, unless conferred by statute. Consequently, as finally passed, the act merely implied the existence of the power of removal in the President without expressly conferring it.

The duties of the secretary for the department of foreign affairs and his relation to the president were specified in the act as follows: "To perform and execute such duties as shall, from time to time be enjoined on or intrusted to him by the president of the United States, agreeable to the constitution, relative to correspondence, commissions, or instructions, to or with public ministers or consuls, from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers, or other foreigners, or to such other matters respecting foreign affairs as the president of the United States shall assign to the said department, and furthermore, that the said principal officer shall conduct the business of the said department in such manner as the president of the United States shall, from time to time, order or instruct."¹

After the establishment of the original executive departments, it was found that there were certain executive matters which must be attended to, but which did not fall within the assigned field of any of the departments. They were such matters as are ordinarily attended to by the Home Secretary in other governments. It was decided, however, not to create a separate home department in our government, but, in September, 1789, such duties in relation to home affairs were imposed upon the department for foreign affairs and the name of the department was at the same time changed to the department of state and that of the chief officer in the department to the secretary of state. These duties relating to home affairs included at first the preservation and promulgation of the laws, the keeping of the great seal and the official records of the government, and the attestation of commissions and proclamations by affixing the seal to them. Shortly afterwards, further duties connected with home affairs were imposed upon the department of state, such as

¹ Stats. at Large, 28.

those connected with patents, copyrights, the census, and supervision of the territories, but these duties were transferred to the department of the interior upon its creation in 1849. The duties relating to home affairs still retained by the department of state include those connected with the election of the president and vice president, with the adoption of amendments to the constitution and with the custody of the seals and archives of the government. The secretary of state also publishes the laws and resolutions of Congress and acts as the medium of correspondence between the president and the state governors. These functions are of a formal character; add no prestige or influence to the office of secretary of state and might, without loss, be transferred to the department of the interior.

The first secretary of state appointed by President Washington after the creation of the department was Thomas Jefferson, and the list of subsequent occupants of the office includes the names of many of the most distinguished statesmen of the country, such as Marshall, Madison, Monroe, J. Q. Adams, Clay, Webster, Calhoun, Marcy, Blaine, Olney, Hay, and Root. Many of the secretaries had rendered eminent service in the halls of legislation and as diplomatic representatives of their country. Six of them subsequently became president of the United States.

The office of secretary of state has, at times, become one of great political importance, and has occasionally even overshadowed to some extent, that of president of the United States. Although the secretary is of course legally the subordinate of the president and entirely responsible to him for his acts, nevertheless in practice the secretary may through his dominating personality, be the determining factor in the control of foreign relations. Although the president officially receives diplomatic representatives accredited to this government, he does not, as a rule, hold communications directly with such representatives on business matters, but such communications pass regularly through the hands of the secretary. While the secretary may thus act as the medium of communication between the president and the diplomatic representatives of other countries, most matters, unless of unusual importance, are handled finally by the secretary himself. Since the ultimate responsibility, however, rests upon the president, he may, when foreign affairs and negotiations become especially important and acute, take their conduct very largely into his own hands.

The secretary of state has assumed a rather vague and ill-defined priority over the other members of the president's cabinet. In the amount of his compensation and in respect to his legal authority he has no superiority over them, and does not occupy a position corres-

ponding to the prime minister in England. But, on account of the rather delicate nature of the duties which he is called upon to perform, he usually enjoys a more confidential relation with the president than do other members of the cabinet. He occupies a seat at the right of the president at cabinet meetings. During the period of the "Virginia dynasty," three secretaries of state passed immediately from that office to the presidency. This gave rise to the popular impression that the secretaryship formed a stepping-stone to the presidency. It is usual in Congressional acts to enumerate the secretary of state first among the cabinet offices, and by act of 1886, Congress has provided that, in case of vacancy in the offices of both president and vice president, the succession to the presidency shall pass through the various members of the cabinet, beginning with the secretary of state. If a president or vice president resigns from office, his resignation should be sent to the secretary of state. In all matters of ceremonial procedure the secretary of state takes priority over the other members of the cabinet. Although the secretary of state has legally of course, no control over the appointment of the other members of the cabinet, in practice he is sometimes appointed first by the president from among the leading men of his party and then consulted by him in the appointment of the other members of the cabinet.

The secretary of state conducts negotiations with foreign countries either through the diplomatic representatives of those countries accredited to the United States or through the American representatives stationed abroad. The choice of these two methods rests with the nation which takes the initiative in the conduct of negotiations relating to a particular matter, and such a nation ordinarily chooses to conduct them at its own capital.

The secretary of state not only conducts foreign relations through the channels indicated, but also acts as the central directing authority over officers and employees of the department. Originally, the department consisted, besides the secretary merely of two clerks, and there was little or no differentiation of function between them. Gradually, however, as the work of the department increased, the number of clerks increased and each clerk was assigned to some particular branch of the work. This differentiation or division of labor constituted, in embryo, that classification of the work of the department which later developed into bureaus. There developed concurrently the need for greater integration through more general oversight and direction than could be furnished by the secretary alone. Consequently, the offices of assistant secretary and second and third assistant secretaries of state were created by acts of Con-

gress enacted in 1853, 1866, and 1874 respectively. The assistant secretaries are all appointed by the president, by and with the advice and consent of the senate, but the duties of oversight and direction which they exercise are such as may be assigned to them by the secretary of state, and depend largely upon the character, attainments, and experience of the respective occupants of those offices. The assistant secretary, until recently, has usually succeeded to the office of acting secretary when the head of the department is absent, and, when so acting, has the same legal powers as the secretary. In consequence, he has usually been considered as a political officer, who should have the same party affiliation as the president and secretary, while, on the other hand, the second and third assistant secretaries have come to be regarded as permanent officials who should not lose their positions merely as a result of a change in party control. This difference between the three assistant secretaries in the matter of tenure of office seems proper in view of the difference in their functions. The assistant secretary does not usually specialize but exercises general oversight under the secretary, while the second and third assistant secretaries exercise administrative supervision over particular bureaus assigned to them. In addition to the three assistants, attempts have been made from time to time to secure the creation in the department of a permanent undersecretary of state to exercise functions analogous to those of the chief of staff in the war department, but without success.

There is also in the department a chief clerk, who is a part of the general administration of the department and exercises supervision over the other clerks in certain matters of a routine character. Much of the work of the department is classified under certain heads and assigned to a number of bureaus, over each of which is a chief, appointed by the secretary. These bureaus are created under the authority of acts of Congress, and their number and titles are changed from time to time. Just as the functions of the department relate partly to foreign affairs and partly to home affairs, so this division of functions is reflected in the organization of bureaus. The work of some of them, such as the diplomatic and consular bureaus, relates directly and solely to foreign affairs, while that of other bureaus, such as those of rolls and library, and indexes and archives, is for the most part concerned with what may be called home affairs. The titles of most of the bureaus indicate in a general way the nature of the work assigned to them. The diplomatic and consular bureaus have charge of correspondence of an administrative character with the members of the diplomatic and consular services respectively. The consular bureau also keeps an efficiency record of members of

the consular service, receives the inspection reports of the consuls-general-at-large, and furnishes facilities for giving a month's preliminary instruction to all newly appointed consular officers.² The bureau of appointments is charged with such matters as the preparation of exequators and warrants of extradition, the receipt of applications for office and the holding of entrance examinations for the foreign service. It also keeps an efficiency record of diplomatic officers for the use of the secretary and assistant secretary.³ Among the duties of the bureau of citizenship, formerly known as the passport bureau, the most important consist in the examination of applications for passports, the preparation and issuance of passports and other matters relating to citizenship, especially of persons who call upon the United States Government for protection while abroad. The bureau of accounts, in addition to its functions relating to the diplomatic, consular and departmental accounts, also keeps a record of receipts and disbursements on account of indemnity funds received by the United States from foreign governments. The functions of the various bureaus are subject to change from time to time at the order of the secretary. This is in accordance with the provision of an act of Congress passed in 1874 as follows: "The secretary of state may prescribe duties for the assistant secretaries, the solicitor, not interfering with his duties as an officer of the department of justice, and the clerks of bureaus, as well as for all the other employees in the department, and may make changes and transfers therein when, in his judgment, it becomes necessary."

A considerable amount of the work carried on by the state department is of a legal character and involves a knowledge both of international and of municipal law. "The foreign policy of the United States must be in accordance with the laws of the United States, and as international law is an integral part of our jurisprudence (*Paquette Habana*, 1899, 175 U. S. 677), it follows that the foreign policy of the United States, in so far as it involves a question of law, rather than courtesy and comity, must be based on international law."⁴ Many of the secretaries of state have themselves been able lawyers. The amount of legal work in the department, however, especially in connection with the examination of claims, was such that, as early as 1848 a clerk was especially assigned to this work, and in 1866, the office of examiner of claims was created. There was some feeling, however, that the existence in the state department of a law officer, advising the secretary of state in matters

² Outline of the Organization and Work of the Department of State, p. 54.

³ Ibid, p. 63.

⁴ American Journal of International Law, Vol. III, p. 943.

affecting our foreign relations, carried with it the possibility of a lack of harmony between such advice and that given to the president and his cabinet by the attorney-general.⁵ Consequently, in the act of Congress passed in 1870 organizing the department of justice, the attempt was made to prevent possible conflict in the legal advice given relating to foreign affairs by transferring the examiner of claims to the department of justice, though his duties remained a part of the functions of the state department. In 1887, however, Francis Wharton declared that "the law bureau of the department of state is entirely severed in practice and by its duties from the department of justice, nor has its head at any time been subject to the directions of the attorney-general." In 1891 the title of the examiner of claims was changed to "solicitor for the department of state," which it has since remained. There are also usually several assistant solicitors and a number of law clerks. Among the legal matters and questions coming before the solicitor and his assistants are those connected with diplomatic claims, international extradition, citizenship and expatriation, extraterritoriality, neutrality, belligerency, contraband, asylum, international arbitrations, and the distribution of awards made by commissions. These matters involve many difficult and intricate questions in the fields of constitutional law, admiralty law, and criminal law, as well as all branches of international law.⁶

Some important changes and additions in the organization of the state department were effected in 1909. Mr. Elihu Root who was secretary of state at the time is quoted as having remarked that he was like a man trying to conduct the business of a large metropolitan law-firm in the office of a village squire.⁷ The work of the department had grown until its personnel and organization had become inadequate. Among the matters which had caused this increase in the work of the department were the increase in our foreign trade, particularly the increase in our export trade in manufactured products as contrasted with raw materials, the many questions growing out of the war with Spain, the increasing number of Americans having property interests abroad, the increasing immigration to the United States, and the enactment of the tariff law of 1909, placing upon the president the duty of administering the maximum and minimum tariff rate provision.⁸ All of these matters raised questions which had to be given attention by the state department. In order

⁵ H. B. Learned, *The President's Cabinet*, p. 189.

⁶ *Outline of the Organization and Work of the Department of State*, pp. 29-30.

⁷ *The Nation*, Vol. 89, p. 294 (September, 1909).

⁸ *Outline of the Organization and Work of the Department of State*, pp. 9-11.

to make the department more fitted for dealing with these new questions a reorganization was brought about in 1909 through the creation of a number of new officers and divisions. The most important of the new officers were the Consulor, the Director of the Consular Service, and the Resident Diplomatic Officer. The duties of the Consulor "embrace the study and treatment of such questions as may from time to time be referred to him involving advanced legal or other questions and requiring uninterrupted consideration and investigation."⁹ The counselor has recently come to be considered the most important officer in the department next to the secretary himself, and has sometimes acted as secretary during the latter's absence.

The creation of the office of Resident Diplomatic Officer represented an attempt to bring about a closer connection between the State Department and the diplomatic service. It is intended that this officer shall be a man with considerable diplomatic experience, who is transferred from the diplomatic service so that the Secretary of State may at all times have at hand a man with practical experience in the foreign field, whom he may consult as to important matters of diplomatic policy and to whom he may assign such questions for study in the light of actual diplomatic experience.

The reorganization of 1909 also brought about the creation of five divisions in the department, known as the divisions of Latin-American Affairs, Far-Eastern Affairs, Near Eastern Affairs, Western European Affairs, and Information. The first four of these divisions are special organs created to take care of diplomatic, consular and miscellaneous correspondence in relation to the principal geographical sections of the world in which the United States has important interests. This specialization of functions is designed to secure and train experts in matters of interest to our government connected with the particular geographical section. The division of information collects and distributes to the diplomatic service information regarding the principal negotiations being carried on by the United States with the various foreign governments. A suggestion that this practice should be adopted was made by Mr. Dallas as early as 1857.¹⁰ This division also supervises the publication of the series of volumes known as "Foreign Relations."

The name "division" is usually given to a unit of organization subordinate to the bureau, but this distinction is not consistently maintained, nor is the division of authority between divisions and bureaus

⁹ *Ibid.*, p. 27.

¹⁰ J. B. Moore, *Digest of International Law*, Vol. IV, p. 782.

always clearly defined. This may result in overlapping or conflict, but, on the other hand, tends to prevent that inflexibility of organization which sometimes interferes with the highest efficiency. In the state department the exact delimitation of the functions exercised by the divisions and bureaus is subject to change by executive order from time to time. In general, however, the bureaus attend to the administrative functions assigned to them, while the duties of the divisions relate, as a rule, to other than administrative or routine matters.

As already pointed out, the department of state, the diplomatic service and the consular service are parts of one whole. Nevertheless, these parts have frequently appeared to be too much separated and disjointed to secure efficient cooperation between them. An attempt to remedy this condition by bringing about a closer connection between the state department and the higher ranks of the diplomatic service was made through the creation, as already noted, of the office of resident diplomatic officer in the department. A similar attempt to bring about a closer connection between the department and the lower grades of the diplomatic and consular service was made through the enactment by Congress in 1915 of a law providing that all appointments to the positions of secretary and consul should be to grades and not to posts, and that any such officer might be assigned to duty in the department of state without loss of grade or salary for a period of not more than three or four years.¹¹

In spite of the considerable improvement which has recently been brought about in the organization of the state department, it still remains true that its personnel and the appropriations made for its support are scarcely adequate. Although the secretary of state is usually considered the leading man in the cabinet, his salary of \$12,000 is no greater than that received by the other members of the cabinet and is quite insufficient in view of his living expenses and the social duties incumbent upon him. The outbreak of the European War greatly increased the work and responsibilities of the state department and accentuated the inadequacy of its personnel and financial support. It is only within recent years that either Congress or the country has begun to realize the great importance of the work of the state department and the need that it should be adequately supported.

The relations between the state department and Congress are not so close as they would be under a parliamentary form of government, but they might be closer than they are even under our form of gov-

¹¹ Act of February 5, 1915, Chap. 23.

ernment. The secretary of state has no seat on the floor of Congress, though this might be accorded to him or to a representative of the state department without violating the Constitution. The secretary of state makes no general or regular report to Congress, but information regarding diplomatic relations and foreign affairs is usually transmitted to Congress by the President in his annual message or address.¹² Congress may call upon the secretary for certain correspondence or other information relating to the duties of his department, and this information is usually furnished if not incompatible with the public interests. The secretary may also appear upon invitation and make statements before committees of Congress. It is obviously wise for the secretary to keep in close touch with the Senate Committee on Foreign Affairs, especially in connection with the negotiation of treaties. Harmonious relations between Congress and the state department will usually be promoted if the party of the administration also controls Congress and if the secretary of state has previously been a member of the national legislature.

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¹² Secretary Olney, however, made such a report and President Cleveland transmitted it to Congress in like manner with those of the other departments. Hinsdale, *History of the President's Cabinet*, p. 307.

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